

EXHIBIT F

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

2

3 STEVEN W. SAMPSON,

3

4 Plaintiff,

4

5 v. 07 Civ. 6890 (PAC)

5

6 JAMES D. ROBINSON, III, et al.,

6 Argument

7 Defendants.

7

8 -----x

8

9 New York, N.Y.

9 April 9, 2008

10 3:10 p.m.

10 Before:

11

11 HON. PAUL A. CROTTY

12

12 District Judge

13

14 APPEARANCES

15

15

16 WOLF HALDENSTEIN ADLER FREEMAN & HERZ LLP

16 Attorneys for Plaintiff

17 270 Madison Avenue

17 New York, New York 10016

18 (212) 545-4600

18 BY: ALEXANDER H. SCHMIDT, ESQ.

19 PAULETTE S. FOX, ESQ.

19

20

20 DEBEVOISE & PLIMPTON LLP

21 Attorneys for Defendant Bristol-Myers Squibb Company

21 919 Third Avenue

22 New York, New York 10022

22 (212) 909-6000

23 BY: LORIN L. REISNER, ESQ.

23

24

24 LATHAM & WATKINS LLP

25 Attorneys for director defendants

1 New York, New York 10022-4802
1 (212) 906-1200
2 BY: KENNETH CONBOY, ESQ.
2

1 satisfy the particularity standard.

2 Reading from paragraph 143, you say, "Demand is
3 excused because there is unlawful conduct that was not within
4 the protection of the business judgment rule."

5 At 145 you say, "a sustained and systematic," I think
6 you mean "systemic," "failure to manage and oversee the
7 company's business."

8 146, "consciously and knowingly ignoring numerous red
9 flags."

10 Pretty broad language. Where do you get more
11 particular, Mr. Schmidt?

12 MR. SCHMIDT: Your Honor, we do include a lot of
13 allegations, some of which are conclusory, but in our brief we
14 have synthesized what are the particularized facts. Those are
15 the facts that we discussed today. The overall environment in
16 which this board was operating at the time of the Plavix
17 lawsuit, the history of --

18 THE COURT: These pleadings have got to be accepted as
19 true and complete, and normally they are not supplemented by
20 your arguments in the briefs.

21 MR. SCHMIDT: No, your Honor.

22 THE COURT: Those are the pleading rules, right?

23 MR. SCHMIDT: Your Honor, the central theory of our
24 case is essentially expressed in paragraphs 148 and 149. We
25 have enough particularized facts, if you ignore the more

1 conclusorily pled facts, to satisfy the particularity

2 requirement.

3 THE COURT: With regard to paragraph 148, what cases

4 do you have specifically that say that these red flags should

5 have alerted the board that it was obligated to actively

6 participate in the negotiations and process leading to the

7 execution of the revised a potential agreement? I've read most

8 of the cases you've cited, but none of the cases that I can

9 recall right now as I sit here say boards have an obligation to

10 appoint their own counsel or to participate in negotiation. I

11 haven't found that case. This may be the first one.

12 MR. SCHMIDT: Yes, your Honor. We haven't found any

13 cases that say that is required, but there are no cases that

14 say that it is not required, either. What the cases say is

15 that if there is a propensity or evidence of possible wrong

16 doing, the board has an affirmative duty to act, to intervene

17 on behalf of the shareholders to prevent that from occurring.

18 How this board could have done that is not a matter of

19 case law; it's a matter of logic and business judgment at the

20 time.

21 THE COURT: If they had intervened, what would they

22 have done differently?

23 MR. SCHMIDT: As I suggested earlier, your Honor, they

24 could have appointed their own outside counsel.

25 THE COURT: Yes, I assume under your hypothetical they